

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

_____)	
CAPPSEALS, INC.,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO. 04-482
v.)	
)	<u>AFFIDAVIT OF ROBERT MAIHOS</u>
ITV DIRECT, INC. and DIRECT)	
FULFILLMENT, LLC,)	
)	
Defendants,)	
)	
Beverly National Bank,)	
)	
Trustee Process)	
Defendant)	
_____)	
STATE OF MASSACHUSETTS)	
) ss.	
COUNTY OF ESSEX)	

I, Robert Maihos, being first duly sworn, depose and state:

1. I am a principal shareholder of defendants ITV Direct, Inc. ("ITV"), and am responsible for the day-to-day operations of ITV. I make this affidavit as to facts of my own personal knowledge.

2. On April 4, 2003, ITV entered into an exclusive "Distribution Agreement" with a California limited liability corporation, Healthy Solutions, LLC, for the manufacture and distribution of a product known as "Supreme Greens with MSM". A copy of that Distribution Agreement is attached hereto as Exhibit A.

3. The Distribution Agreement identified Healthy Solutions as the manufacturer of the Supreme Greens with MSM product and made no mention whatsoever of any third party as

the manufacturer or producer of the Supreme Greens with MSM product. Nowhere in the agreement is any other party mentioned or identified, nor did the parties contemplate any specific third party as the manufacturer of the Supreme Greens with MSM product.

4. Between April 4, 2003 and February 6, 2004, ITV issued purchase orders to Healthy Solutions for the purchase of the Supreme Greens with MSM product in varying quantities. None of these purchase orders identified any manufacturer other than Healthy Solutions.

5. In order to market the sale of Supreme Greens, ITV expended millions of dollars on advertising for the product, primarily through the production and airing of two separate infomercials featuring Healthy Solutions founder and principal shareholder, Dr. Alex Guerrero. ITV also developed the logo and labels for Supreme Greens with MSM, and with the encouragement and approval of Healthy Solutions filed a trademark application for the name and design of the product.

6. In late 2003, ITV learned that Healthy Solutions had filed a competing trademark application for the name Supreme Greens with MSM, in violation of the parties' agreement that the trademark would belong to ITV. In early 2004, the parties modified the prior Distribution Agreement to include sales of Supreme Greens with MSM over the Internet and the withdrawal of Healthy Solutions' competing trademark application. In connection with this agreement, ITV expended substantial additional funds on marketing and advertising for the product, which it has yet to recoup from sales of the product.

7. In February 2004, ITV learned that, despite the modified agreement and ITV's continued expenditures on marketing and advertising, Healthy Solutions has failed to provide an accounting of Internet sales to ITV and has failed to withdraw its trademark application as

promised, causing substantial injury to ITV. Healthy Solutions has also sought to establish relationships with other distributors, despite the exclusivity provision in the Distribution Agreement. Based on these breaches of contract and other acts, ITV has refused to pay Healthy Solutions under the Distribution Agreement, and on March 2, 2004 filed an action in the United States District Court for the District of Massachusetts against Healthy Solutions and Dr. Guerrero, alleging breach of contract, conversion, misrepresentation and violations of M.G.L. c. 93A. A copy of that Complaint is attached hereto as Exhibit B. The following day, on March 3, 2004, Healthy Solutions filed an action against ITV in the United States District Court for the Central District of California, seeking payment for certain outstanding invoices. A copy of that Complaint is attached hereto as Exhibit C. Cappseals is not included in either lawsuit as a necessary party, nor to my knowledge has Cappseals sought to join either lawsuit.

8. At no time has ITV or Direct Fulfillment had any contract or agreement with the plaintiff in this action, Cappseals, Inc. ITV has never communicated directly with Cappseals regarding the manufacture of Supreme Greens with MSM, nor has ITV ever agreed to pay Cappseals directly for product ordered by ITV from Healthy Solutions. I have personally never had a single communication with any representative of Cappseals. ITV has never submitted a purchase order to Cappseals for the manufacture of Supreme Greens with MSM, nor has Cappseals ever submitted an invoice to ITV based upon any such purchase order. At all times, the only contractual relationship that ITV has had with any person or entity regarding the manufacture of Supreme Greens with MSM is with Healthy Solutions, and that contract does not specifically identify or contemplate any benefit to Cappseals or any other third-party manufacturer.

9. ITV believes it has been substantially damaged by Healthy Solutions' breach of contract, conversion and misrepresentation, as alleged in its complaint filed on March 2, 2004. ITV believes that its damages caused by Healthy Solutions' conduct exceeds any amounts that Healthy Solutions currently claims is owed to them.

Signed under the penalties of perjury this 22nd day of March, 2004.



Robert Maihos